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IN THE

Supreme Court of the United States

October Term, 1961.

No. 269.

MORRIS J. LIPP, trading as MIDWEST POSTER EXCHANGE; BENJAMIN SIEGEL, trading as THEATRE ADVERTISING COMPANY; FANNIE SCHRADER, Administratrix of the Estate of Jay Schrader, Deceased; DAVE MITCHEL, trading as SOUTHWEST POSTER SERVICE; JACOB RIFF; HARRY VOGELSTEIN, trading as BALTIMORE POSTER COMPANY; and CHARLES LAWLOR and MITCHELL PANTZER, co-partners trading as INDEPENDENT POSTER EXCHANGE,

Petitioners,

v.

NATIONAL SCREEN SERVICE CORPORATION, COLUMBIA PICTURES CORPORATION, METRO-GOLDWYN-MAYER INC. (formerly Loew's Incorporated), PARAMOUNT FILM DISTRIBUTING CORPORATION, RKO GENERAL, INC. (formerly RKO Radio Pictures, Inc.), TCF FILM CORPORATION (formerly Twentieth Century-Fox Film Corporation), UNITED ARTISTS CORPORATION, UNIVERSAL FILM EXCHANGES, INC., and WARNER BROS. PICTURES DISTRIBUTING CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinion of the district court is reported at 188 F. Supp. 245 (1960). The opinion of the Court of Appeals is reported at 290 F. 2d 321 (1961).

QUESTION PRESENTED.

Was the district court right in giving effect in these cases to a pretrial agreement, formulated with the express consent of all counsel and stated of record by the district court, stipulating that the adjudication of certain factual issues in the trial of the earliest of eight treble damage actions—all concededly instituted "on the same grounds" against the same defendants—should be dispositive of identical factual issues in the other cases?

STATEMENT.

The petition for certiorari seeks review of seven judgments of the court of appeals affirming judgments of the district court for the defendants in seven private antitrust actions. The actions are factually identified with and were concededly brought on the basis of "allegations with respect to conspiracy and monopolization [which] were the same"[1] as in **Lawlor v. National Screen Service Corp., *et al.*,**[2] (hereinafter referred to as the **Lawlor** case). The **Lawlor** case was fully tried, resulting in findings that none of the defendants had violated the antitrust laws. The judgment for the defendants in **Lawlor** was affirmed by the court below, 270 F. 2d 146 (3d Cir. 1959), and this Court denied certiorari, 362 U. S. 922 (1960).

Six of the seven judgments which are the subject of the petition for certiorari are in cases[3] commenced in

1. Petition, p. 4.

2. Civil Action No. 10,020 in the United States District Court for the Eastern District of Pennsylvania.

3. Those of petitioners Lipp, Siegel, Schrader, Mitchell, Riff and Vogelstein.

1950 (1a),[4] soon after commencement of the **Lawlor** case.[5] In all of them the cause of action rested on the same legal and factual bases as the cause of action alleged in **Lawlor**, and all petitioners, as well as the plaintiffs in **Lawlor**, have at all times been represented by the same counsel, Francis T. Anderson, Esquire.

At a pretrial conference in the **Lawlor** case in October 1957, Judge Kraft, the trial judge, took note *sua sponte* of the pendency of these six companion cases. He urged the parties to attempt to reach an agreement which would prevent any possibility that the issues to be litigated in **Lawlor** would have to be relitigated in any of the companion cases (2a).[6]

At the next pretrial conference, counsel reported to Judge Kraft that they had been unable to come to any agreement. As petitioners' counsel said, "it would seem very unlikely that we could come to any definite understanding" (3a). Counsel indicated that their discussion

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4. Page references carrying an "a" or "b" suffix are to the court of appeals appendices of the appellants and appellees in that court, respectively.

5. The seventh case, i.e., petitioners Lawlor, *et al.*, is an action, brought in 1957, in which the plaintiffs in the other six cases, together with the plaintiffs in **Lawlor**, filed a single complaint containing seven separate counts, one for each of the plaintiffs in the original seven cases, realleging the same causes of action, respectively, for the period subsequent to the commencement of the original action brought by that plaintiff. No further reference need be made to that action since the parties are in agreement, as stated at page 10 of the petition, that disposition of that case is governed by the disposition of the other six.

6. In "Appendix C" to the petition for certiorari, petitioners set forth excerpts from the pretrial conferences in the **Lawlor** case. These excerpts are not complete; they omit portions relating to the problem presented by the pendency of seven cases involving identical issues as to liability. For that reason, references in this Statement will be made to the Appendix for Appellants in the court below, which sets forth the relevant portions of the pretrial conferences in their entirety.

had been along the lines of "trying all the cases at this time" (4a)—*i.e.*, consolidating them for trial—a procedure which was opposed by petitioners' counsel (4a, 5a) as "substantially prejudicial" to petitioners' interest (6a) and was opposed by respondents' counsel as well, as they later indicated (11a).

Upon hearing counsel's report, Judge Kraft expressed disappointment at their failure "to resolve at least the liability questions in all of the cases by a stipulation to make the factual determinations, where the issues are identical, in this case [**Lawlor**] determinative of the factual issues in the other cases" (4a).

Following further discussion, petitioners' counsel, Mr. Anderson, told the trial court that, "If they [the respondents] are offering to let this case control the others, I think that we can agree to that" (5a). A few moments later, petitioners' counsel reiterated—after voicing objection to the idea of consolidating the cases—that he saw "no reason why there should not be an agreement that the result of this case [**Lawlor**] shall be binding on the other cases, which would permit us to try this case fully and entirely at one time. As I say, I see no reason why there should not be such an agreement, Your Honor" (6a).

Judge Kraft concluded the conference by suggesting to counsel that they attempt to reach an agreement along the lines described by petitioners' counsel and that, if they could not so agree, they be prepared to show cause why the trial judge should not *sua sponte* consolidate all seven cases for trial (7a).

At the next pretrial conference, counsel reported to Judge Kraft, in the words of petitioners' counsel, Mr. Anderson, that they had "agreed in principle" (8a). Mr. Anderson indicated that petitioners were willing to accept a provision, in a draft stipulation then under consideration, that if respondents prevailed in the **Lawlor** case that would end the litigation in the cases here involved (9a). The

only major differences between the parties, as reported to the trial judge by their counsel, involved a provision (8a-11a) relating to certain affirmative defenses—which differed among the various cases—and respondents' desire for a provision which would preclude informing the **Lawlor** jury of the existence of the stipulation (13a-14a).

In an effort to resolve these differences, Mr. Anderson expressed his willingness to agree to what he called a "simplified stipulation" (9a) to waive a jury trial in the cases other than **Lawlor** and to provide for the district court "to apply [in the other six cases] the results of this jury trial [in **Lawlor**] insofar as they are applicable" (9a). He also indicated his willingness to try **all**[7] of the cases on the issue of liability, so long as the **Lawlor** case were tried "completely"—*i.e.*, on the issue of damages as well as liability—but added that he did not think such a consolidation necessary (12a-13a).

Finally, at the next pretrial conference, an agreement evolved. Petitioners' counsel informed Judge Kraft that he had "startling good news": the parties had agreed that "the one way to solve all those difficulties" was to waive jury trial in all of the cases, including **Lawlor** (17a). He stated that while he had express authority to waive a jury trial in the **Lawlor** case, he did not have such authority in the other six cases. As to those, he said he thought he had implied authority, that he had "no doubt that the clients [petitioners here] will be in accord with that" and that, "I am sure that as a practical matter my authority extends to the seven [cases]" (17a). At no time was any reference made or question raised concerning counsel's authority to enter into the agreement for all parties to be bound by the factual findings on the focal issues.

An off-the-record discussion followed that announcement, and then all defense counsel stated for the record

7. Wherever boldface type is used in this brief, the emphasis is ours.

their affirmation of the statement of petitioners' counsel that the parties waived jury trial in all seven cases (17a-18a). When one of defense counsel then asked whether he was correct in his understanding that "the Lawlor case will still be tried by itself but the stipulation [waiving jury trial] goes for all", petitioners' counsel answered in the affirmative (18a).

Another of defense counsel then stated that it was his understanding that **Lawlor** would be "tried in its entirety" and that adjudication of the issue of Sherman Act violation in **Lawlor** "shall be applicable to the other cases of the six plaintiffs that are pending" but that he was not clear on the subject of damages in those cases (18a). Following another off-the-record discussion, Judge Kraft stated on the record (18a-19a) the stipulation set forth at pages 5 to 7 of the petition for certiorari.

The stipulation provided that (1) jury trials were waived in all cases, (2) **Lawlor** would be tried to final determination in its entirety and trial of the other six cases would be postponed pending final adjudication in **Lawlor**, and (3) if it were finally determined in **Lawlor** that no conspiracy or monopolization existed, such finding would be determinative in the other six cases but if the determination in **Lawlor** were to the contrary the other six cases would then be consolidated for a trial at which petitioners would offer their evidence of the fact and extent of their injury by reason of the conspiracy or monopolization, and respondents would offer their evidence in support of affirmative defenses and in contradiction of the evidence of petitioners.

All counsel stated their concurrence in the stipulation (19a-20a). Petitioners' counsel, Mr. Anderson, showed that he correctly understood the effect of the stipulation when he said, during the **Lawlor** trial (28a):

> "I submit, if your Honor pleases, therefore, that this trial will be determinative of the Dave Mitchel case."

As noted above, **Lawlor** was tried in November-December 1957 and January 1958 (1b-2b) and resulted in a judgment based upon conclusions of law that there was no monopolization, no attempt to monopolize and no conspiracy within the meaning of Sections 1 and 2 of the Sherman Act.[8] The court of appeals (Goodrich, Kalodner and Staley, *JJ.*) unanimously affirmed in an opinion which specifically discussed and approved the trial court's holdings on the monopolization and conspiracy issues. 270 F. 2d 146 (3d Cir. 1959). This Court denied certiorari. 362 U. S. 922 (1960).

Following the denial of certiorari in **Lawlor**, respondents—relying upon the stipulation described above—moved for the summary judgments in the seven other cases. The motions were granted by the district court and the judgments were affirmed by the court of appeals. It is this action which petitioners now ask this Court to review.

In the district court, petitioners argued against enforcement of the stipulation on the ground that they had not had their "day in court" because of the district court's ruling, during the **Lawlor** trial, that the **Mitchel** case was not then being tried and that admissions concerning some defendants having subscribed to trade journals, obtained by the plaintiff from some of the defendants in that case, were therefore inadmissible (3b);[9] because "dozens of the

8. The exhaustive findings of fact and conclusions of law by Judge Kraft in the **Lawlor** case were not reproduced in the appendices below. They were, however, part of the record before the court below and, at respondents' request have been certified to this Court so as to be properly before the Court in its consideration of the present petition. The conclusions of law referred to in the text are numbers 3 and 4, Transcript of Oct. 22, 1958, p. 73, in the **Lawlor** case.

9. Neither in the court of appeals nor in their petition for certiorari to this Court in **Lawlor** did the plaintiffs in that case challenge—or even refer to—the district court's ruling excluding the **Mitchel** case Rule 36 admissions, discussed at pages 8-14 of the present petition for certiorari. Brief for Appellants, **Lawlor v. National Screen Service Corp.**, 270 F. 2d 146 (3d Cir. 1959); Petition for Certiorari, **Lawlor v. National Screen Service Corp.**, 362 U. S. 922 (1960) (No. 558 Misc., Oct. T. 1959).

court's findings of fact peculiar to the plaintiffs" in **Lawlor** had formed "in large part" the basis for the judgment for the respondents in the **Lawlor** case (4b); and because "much of the most important evidence introduced by plaintiffs in the Lawlor case was totally disregarded by the court" (4b).[10]

During oral argument on the motions for summary judgment in the district court, Judge Kraft, in an effort to ascertain precisely what position petitioners were taking, first asked their counsel, Mr. Anderson, whether he denied that the stipulation had in fact been made in the language appearing in the record (6b). After equivocating by asserting that he had not made a stipulation having the meaning and effect attributed to it by respondents (6b-7b), Mr. Anderson conceded that the stipulation had in fact been made and that the record accurately reflected its terms (7b).

Next, even though no question of his authority to make the stipulation had been suggested by Mr. Anderson's brief (3b-5b) or in his oral argument, Judge Kraft asked whether it was petitioners' position that Mr. Anderson's entry into the stipulation had been without authority (7b). Again equivocating, Mr. Anderson first asserted that he "had no express authority to agree to anything" (7b), then agreed that the stipulation was made with authority (7b-8b), and then stated that he "repudiate[d] any agreement that I may have made to have their [petitioners'] cases dismissed without their day in court" (8b). Pressing for a precise statement by Mr. Anderson of his position, Judge Kraft finally asked whether a full statement thereof was contained in petitioners' brief, and Mr. Anderson answered in the affirmative (9b), declining the court's express offer, twice repeated, to consider any supplementary position Mr.

10. The statements just referred to appear in petitioners' brief in the district court. The parties' briefs were incorporated in the record by that court's order of September 22, 1960 (1a).

Anderson might care to state orally (9b-10b). The brief (3b-5b) contained no hint whatever of any asserted lack of authority.

Judge Kraft, in his opinion (31a-35a) granting respondents' motions for summary judgments, rejected petitioners' contentions that they had not "had their day in court" because of the exclusion, during the **Lawlor** trial, of certain admissions obtained from the motion picture company defendants pursuant to Rule 36 in the **Mitchel** case. The contention was rejected on the ground, stated by Judge Kraft during the **Lawlor** trial, that "the stipulation did not embrace any agreement that evidence which was admissible in one case not on trial should be admissible in the case now on trial though otherwise inadmissible there" (34a).

Judge Kraft properly rejected petitioners' contention that the stipulation was not binding because the **Lawlor** judgment was based, "in large part", on findings peculiar to the plaintiffs in that case. There is not only no support in the record for that contention, but also it is noteworthy that the averments in all seven of the complaints were identical.

The Court of Appeals for the Third Circuit (Goodrich, Kalodner and Staley, *JJ.*) affirmed per curiam. That court (Petition, pp. 27-28), rejected the contention of petitioners' counsel that he had no authority to enter into the stipulation because a lawyer has no authority to compromise a case. The court pointed out that the stipulation was "no compromise of a lawsuit. It was, instead, a common sense way of handling several cases involving the same points", an "arrangement to expedite this litigation to final conclusion" and "well within the authority of the lawyers who participated" (*id.* at 28).

It is this determination of the court below which the petition for certiorari asks this Court to review.

Argument.

I.

THE PETITION FAILS TO ADVANCE ANY GROUND JUSTIFYING A GRANT OF CERTIORARI.

Viewing this record in a light most favorable to petitioners, the most that is presented is an issue as to the application of the pretrial stipulation of counsel for all parties, entered into in order to avoid six additional trials of the ultimate issues of conspiracy and monopolization based upon precisely the same evidence—hardly an issue meriting consideration by this Court. This is especially so in view of the fact that both the district judge, who was intimately familiar with the making of the stipulation and actually dictated its language (18a-19a), and the court of appeals have held that the stipulation meant exactly what it said and exactly what all parties and the district judge originally intended it to mean—namely, that the determination of the issues of Sherman Act violation at the trial of the **Lawlor** case would govern the identical issues in petitioners' cases. Therefore, since those issues were determined favorably to these respondents in **Lawlor**, there is no factual or legal basis to support a recovery by petitioners in the present cases.

Even if it could be assumed that there is doubt of the correctness of the interpretation of the stipulation by the courts below—and there is not, as we will show under Point II of our argument, *infra*, pp. 14-16, such a question of interpretation obviously does not present any issue of general importance worthy of this Court's consideration in the exercise of its certiorari jurisdiction.

The petition for certiorari should be denied since the issue involved herein is concerned solely with the enforcement of a procedural stipulation intended to prevent needless multiple trials of identical factual issues in companion

cases. It does **not** involve "principles, the settlement of which is important to the public", nor is it a case "where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal": **Layne & Bowler Corporation v. Western Well Works, Inc.**, 261 U. S. 387, 393 (1923); **Fields v. United States**, 205 U. S. 292, 297 (1907).

Without an assumption of doubt as to the correctness of the application of the stipulation by the courts below, no issue at all is presented by this record.

A.

The holdings of this Court in **Holker v. Parker**, 7 Cranch 435 (U. S. 1813), and **United States v. Beebe**, 180 U. S. 343 (1901), could become relevant, if at all, only under petitioners' absurd interpretation of the stipulation (Petition, pp. 19-20) as an agreement under which they stood to gain nothing even if the plaintiffs had prevailed in **Lawlor**.[11]

The fact is clear, however, as the courts below have held, that if the plaintiffs had prevailed in **Lawlor**, the stipulation would have gained for petitioners a determination, conclusive against respondents, that respondents had violated the Sherman Act. That being the stipulation's plain meaning, there is no basis for petitioners attempt to characterize it as a compromise of a lawsuit within the holdings of the **Holker** and **Beebe** cases that a lawyer must have express authority for a compromise.[12] The stipulation

11. Significantly, petitioners did not advance this interpretation of the stipulation either in their brief (3b-5b) or oral argument (6b-10b) before the district judge.

12. The present suggestion by petitioners' counsel that he lacked authority is an unsupportable afterthought. Contrary to the impression sought to be created by the petition (pp. 7-8), the only qualification expressed by counsel as to his authority during any of the pretrial conferences was in connection with the waiver of jury trial in the cases other than **Lawlor** (17a). And, as our Statement (p. 8 *supra*) indicates, petitioner clearly abandoned any question of lack of authority during the argument in the district court on the present issues.

was designed, as the court of appeals said, as "a common sense way of handling several cases involving the same points" (Petition, p. 28).

The court of appeals further held that such an agreement was "well within the authority of the lawyers who participated" (*ibid.*). This conclusion is indisputably correct and is actually supported by this Court's holding in the **Holker** case. In that case the attorney, without his client's express consent, first agreed to refer a claim to arbitration and then agreed to the challenged compromise which was embodied in the arbitrators' award. Mr. Chief Justice Marshall's opinion held that while the attorney lacked authority to agree to the compromise he did have authority, even without his client's express consent, to agree that the case could be referred to arbitration (7 Cranch at 448). If an attorney's implied authority extends to reference of a claim to arbitration, it extends *a fortiori* to an agreement, such as the stipulation here, that issues involved in the claim will be determined by the trial of identical issues in a related case.

B.

In footnote 3 at page 19 of their petition, petitioners suggest that, even though the stipulation is "bilateral", as the courts below have held, it is not enforceable because "the one and only lawful way for the trial court to have dealt with the situation before it was to order the cases consolidated for trial, and **that is obviously what petitioners' counsel believed had been ordered.**"

This statement, in the face of the record facts, is palpably disingenuous, and the issue which petitioners seek to draw from it is frivolous. As our Statement shows (pp. 3-6, *supra*), the references to consolidation, in the pretrial conference discussions preceding the making of the stipulation, were by the trial judge who suggested that he would consolidate *sua sponte* if the parties themselves were unable to arrive at a satisfactory stipulation. Petitioners' counsel

flatly opposed consolidation (4a, 5a).[13] That Mr. Anderson fully understood that the stipulation did not provide for consolidation is obvious not only from the express provisions of the stipulation—as to which petitioners' counsel said, "I subscribe to that" (19a)—but also from his affirmation of record, which leaves no doubt that he understood exactly the effect of his deliberate agreement (18a):

> "MR. NIZER: As I understand it, when we say 'the cases,' the Lawlor case will still be tried by itself but the stipulation goes for all, isn't [that] the way it began?
>
> MR. ANDERSON: Yes."

C.

Equally frivolous and equally indicative of the lack of importance of the matters which the petition for certiorari seeks to present is the subtle but transparent effort of the petition to suggest that petitioners' counsel, Mr. Anderson, who has been counsel for petitioners at all times during this litigation, and who signed the petition for certiorari, made "an agreement improvidently or deceitfully" (p. 21), that his judgment was "imposed upon, or not fairly exercised" (p. 22), and that he was a victim of "surprise" (p. 12).

The implication that Mr. Anderson was imposed upon, or that he was improvident or deceitful, is so conclusively negated by the record of the discussions in the presence of the trial judge preceding the making of the stipulation that

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13. Later, he indicated a willingness to consolidate, trying all cases on the issue of liability so long as the jury trial also included the issue of damages in **Lawlor** (12a), but he unequivocally asserted that he did not think such a consolidation necessary (13a). That procedure, to which petitioners' counsel was willing to agree, was not what the trial judge had in mind. Judge Kraft proposed to try a consolidated case on the issue of liability, severed from the issue of damages (5a, 6a, 7a, 15a).

further comment is unnecessary.[14] And as for the suggestion of "surprise", which relates to the exclusion from the **Lawlor** case of the admissions of fact in the **Mitchel** case, the trial judge has clearly demonstrated the lack of merit in petitioners' position.[15]

Petitioners' counsel, in an effort to obtain an opportunity to retry the issues of Sherman Act violation which have already been fully tried and adjudicated in the **Lawlor** case, is disavowing the stipulation into which he deliberately entered, and, in violation of its terms, is seeking to create the very situation which the stipulation was designed to prevent. He is attempting to thwart what the court below (Petition, p. 28) properly characterized as an arrangement "to expedite this litigation to final conclusion".

II.

THE COURTS BELOW CORRECTLY INTERPRETED AND APPLIED THE STIPULATION.

The stipulation provided, in effect, that the determination as to Sherman Act violation in the **Lawlor** case would be binding on all parties, and the courts below have so interpreted and applied the stipulation. Taking issue with that

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14. All of the relevant portions of the pretrial conference transcripts appear at 2a-19a. The history is summarized in some detail in our Counter-Statement, pp. 3-6 *supra*.

15. In commenting on this situation when it arose during the **Lawlor** trial, Judge Kraft said (25a): "These Requests for Admissions were filed in the other case. It would have been only a little difficult to have filed like copies in this case, and you would have had them if they were [deemed] of importance to your case."

Again (28a): "* * * That they were not filed is counsel's problem, not the Court's. What were the reasons that it was not done is counsel's problem, not the Court's. No meritorious explanation has been advanced for the omission."

Previously, petitioners' counsel had said (26a): "Well, Your Honor, all I can do is state my position. I don't assume that I can justify my position."

interpretation, the petition (p. 19) challenges the statement of the court of appeals that "Defendants took their chances on judgments against them in seven cases if the *Lawlor* case was won", and seeks to justify that challenge by asserting that if plaintiffs had won in **Lawlor**, "the other cases would go to trial in regular course".

This is not so.

First, even before Judge Kraft had dictated the stipulation, respondents knew that if they lost in **Lawlor**, the proposed stipulation would foreclose them from retrying the Sherman Act issues in petitioners' cases. As stated by one of respondents' counsel (18a)—

> "MR. WARD: It is my understanding * * * that the issue in the Lawlor case as respects the question whether there has been a violation by the defendants, or any of them, of the Sherman Act shall be applicable to the other cases of the six plaintiffs that are pending."

Second, it was natural for Judge Kraft in dictating the stipulation to have used one form of language in dealing with the possibility that plaintiffs would lose on the Sherman Act issue in **Lawlor**, in which event the litigation in the other cases would end without any occasion for further proceedings, whereas in dealing with the possibility that plaintiffs would win in **Lawlor**, he used a different form of language to spell out the further proceedings which would be necessary in petitioners' cases on the issues of damages and affirmative defenses. It is apparent from the stipulation's express provisions that Judge Kraft did not approve a "one-sided" stipulation whereby petitioners would have had to reestablish a Sherman Act violation in their cases if the plaintiffs had won in **Lawlor**. On the contrary, the stipulation was designed to relieve petitioners from such a burden if the plaintiffs in **Lawlor** prevailed. Thus, in describing the further proceedings in petitioners' cases if the plaintiffs won in **Lawlor**, Judge Kraft made it clear that

there would be no issue left to try with respect to the existence of a conspiracy or monopolization. Judge Kraft concluded the stipulation by saying (19a):

> "In these trials [the consolidated trials of petitioners' cases in the event the plaintiffs prevailed in Lawlor] the plaintiffs shall offer their evidence in support of their allegation that they suffered injury or damage by reason of the unlawful conspiracy or damage by reason of the unlawful conspiracy or monopoly and evidence of the extent of the damage alleged to have been suffered."

The stipulation expressly provided that if the plaintiffs established a Sherman Act violation in **Lawlor** there would be left for trial in petitioners' cases only the remaining issues peculiar to petitioners. Respondents could not have—and would not have—contended to the contrary had they lost in **Lawlor**. And if they had contended so, petitioners' counsel quite justifiably would have cried "foul".

Thirdly, that petitioners' counsel well understood the meaning and effect of the stipulation to be exactly as we have stated is unequivocally demonstrated by his statement, made prior to the dictation by the court of the stipulation on the record, when he said (6a):

> "MR. ANDERSON: I see no reason why there should not be an agreement that the result of this case [Lawlor] shall be binding on the other cases, which would permit us to try this case fully and entirely at one time. As I say, I see no reason why there should not be such an agreement, Your Honor."

Then, again, during the **Lawlor** trial, he said, after reading part of the text of the stipulation (28a):

> "I submit, if Your Honor pleases, therefore, that this trial will be determinative of the Dave Mitchel case * * *."

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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